



## H.R. 5351 - Renewable Energy and Energy Conservation Tax Act

### EXECUTIVE SUMMARY

H.R. 5351 was introduced by Representative Charles Rangel (D-NY) on February 12, 2008. It was referred to the House Ways and Means Committee, but never considered. The bill is expected to be considered on the floor under a structured rule on February 27, 2008.

The bill extends current and creates new tax credits and other incentives with the stated goal of promoting energy efficiency and conservation. Many of the tax credits that are being extended by this bill are set to expire December 31, 2008.

H.R. 5351 establishes a new category of energy conservation bonds with a national limit of \$3.6 billion for these bonds. Ways and Means Committee Republicans expressed concerns that these new conservation bonds would be at risk for waste, fraud, and abuse. Furthermore, the bill expands Davis-Bacon "prevailing wage" requirements. The overall decrease in revenues is offset by a \$17.6 billion tax increase, primarily on oil and gas companies.

The House has already passed three similar energy tax increases in this Congress: H.R. 6 (passed [228-193](#) on 1/18/07); H.R. 2776 (passed [221-189](#) on 8/4/07); and H.R. 6 as amended (passed [235-181](#) on 12/6/07). Due to Republican opposition, the final version of H.R. 6 passed by Congress and signed into law (P.L. 110-140) by the President on December 19, 2007, did not include these tax hikes. As it did with previous versions, the Administration has threatened to veto the bill, arguing that "the bill would use the tax code to target tax increases on a specific industry in a way that will lead to higher energy costs to U.S. consumers and businesses."

### FLOOR SITUATION

H.R. 5351 is being considered on the floor under a structured rule. The rule:

- Provides 90 minutes of debate equally divided and controlled by the chairman and ranking republican of the Ways and Means Committee;
- Waives all points of order against consideration of the bill except those arising under clause 9 (earmarks) and 10 (PAYGO) of Rule XXI;
- Provides that the bill shall be considered as read;
- Waives all points of order against provisions of the bill. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure);
- Makes in order an amendment in the nature of a substitute printed in the Congressional Record if offered by Rep. McCrery (R-LA) or his designee;
- Waives all points of order against the amendment in the nature of a substitute except those arising under clause 7 of rule XVI or clause 9 (earmarks) and 10 (PAYGO) of Rule XXI;
- Provides that the substitute amendment shall be considered as read and shall be separately debatable for one hour equally divided and controlled by the proponent and an opponent.



# LEGISLATIVE DIGEST

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- Provides one motion to recommit with or without instructions;
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the motion to a time designated by the Speaker; and
- Provides that H.Res. 983 is laid on the table.

The bill was introduced by Representative Charles Rangel (D-NY) on February 12, 2008. It was referred to the House Ways and Means Committee, but never considered. The bill is expected to be considered on the floor on February 27, 2008.

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## SUMMARY

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Renewable Energy Tax Credit: The bill extends and modifies the production tax credit, through the end of 2011, for generating electricity from sources such as wind; geothermal; closed-loop biomass; hydropower; landfill gas; and trash combustion facilities. It also creates a tax credit for a new energy production category – marine renewables, which is energy derived from waves and tides. The bill creates a new limitation on the amount of credits that can be claimed with respect to property placed in service after 2009. This provision is estimated to decrease revenues by \$6.6 billion over ten years.

Solar Energy and Fuel Cell Investment Tax Credit: The bill extends and modifies the tax credit for commercial solar energy and fuel cells through the end of 2016. It increases the credit limitation for fuel cell property from \$500 to \$1,500 per half kilowatt of capacity. Additionally, the bill expands eligibility so that public electric utilities will qualify for the tax credit. This provision is estimated to decrease revenues by \$621 million over ten years.

Clean Renewable Energy Bonds: The bill authorizes \$2 billion for additional bonds to finance tax-exempt facilities that generate electricity from clean renewable energy sources. The provision is estimated to decrease revenues by \$640 million over 10 years.

Qualified Energy Conservation Bonds: The bill establishes a new category of energy conservation bonds for projects focused on reducing energy consumption in publicly-owned buildings; implementing green community programs; rural development involving electricity from renewable energy sources; and other qualified projects to reduce greenhouse gas emissions. There is a national limit of \$3.6 billion for these bonds. The provision is estimated to decrease revenues by \$1.9 billion over 10 years.

*Note: Ways and Means Committee Republicans have raised concerns that these two bond programs would be at risk for waste, fraud, and abuse because bonds could be stripped and traded. Moreover, the conservation bonds lack substantial oversight and provide no assurance that projects funded with bond proceeds would actually curb greenhouse gas emissions or promote our energy security.*

Davis-Bacon: The bill extends federal Davis-Bacon “prevailing wage” requirements to all projects financed through the two tax credit bond programs.

Energy Tax Credits: The bill modifies and/or extends a number of energy-related tax incentives including:

- Residential energy-efficient property credit (decrease revenues by \$634 million over 10 years)
- Tax credit for alternative refueling stations (decrease revenues by \$156 million over 10 years)
- Biodiesel production and renewable diesel tax credits (decrease revenues by \$202 million over 10 years)
- Tax credits for energy-efficient upgrades to existing homes (decrease revenues by \$1.53 billion over 10 years)



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- Enhanced tax deduction for energy-efficient commercial buildings (decrease revenues by \$776 million over 10 years)
- Tax credit to manufacturers of energy-efficient appliances (decrease revenues by \$323 million over 10 years)

## New Energy Tax Provisions

- Plug-in electric vehicle tax credit (decrease revenues by \$1.3 billion over 10 years)
- New York Liberty Zone tax benefits (decrease revenues by \$1.83 billion over 10 years)
- Extending transportation fringe benefits to those who commute to work by bicycle (decrease revenues by \$10 million over 10 years)
- Five-year depreciation of "smart meters" (decrease revenues by \$1.52 billion over 10 years)
- Tax credit for production of cellulosic ethanol (decrease revenues by \$24 million over 10 years)

Denial of Manufacturing Deductions for Certain Oil Companies: The bill would limit aspects of the manufacturing deduction (section 199 of the tax code) for exploration, production and refining of oil and natural gas, which was created in 2004 to help encourage the preservation and expansion of manufacturing jobs in the United States. Specifically, the provision would repeal the ability of the biggest oil companies to claim the deduction and prevent smaller oil and gas companies from getting the full benefit of the deduction. The provision is estimated to increase taxes by \$13.57 billion over 10 years.

*Note: Concerns have been raised that this provision dis-incentivizes domestic production and places U.S. producers and refiners at a competitive disadvantage. The House voted on similar versions of this provision 3 times last year during consideration of H.R. 6 and H.R. 2776.*

Clarification of foreign oil and gas extraction income: The bill limits the ability of U.S. companies to utilize foreign tax credits with respect to foreign oil and gas extraction, which will subject American companies to double-taxation on foreign oil and gas production. The provision is estimated to increase taxes by \$4.2 billion over 10 years.

*Note: Variations of this provision were included in H.R. 6 and H.R. 2776. Ways and Means Republicans have expressed concerns that this double-taxation of American companies will make it more difficult for them to compete in the development of oil and gas fields abroad.*

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## BACKGROUND

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The House has already passed three similar energy tax increases in this Congress: H.R. 6 (passed [228-193](#) on 1/18/07); H.R. 2776 (passed [221-189](#) on 8/4/07); and H.R. 6 as amended (passed [235-181](#) on 12/6/07). The Administration threatened to veto each of these versions, arguing that it "raises taxes in a way that will increase energy costs facing consumers." Due to Republican opposition, the final version of H.R. 6 passed by Congress and signed into law (P.L. 110-140) by the President on December 19, 2007, did not include these tax increases.

Many of the tax credits that are being extended by this bill are set to expire December 31, 2008. A list of the expiring tax credits can be found in the Joint Committee on Taxation's [List of Expiring Federal Tax Provisions](#) (starting on page 8).

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## COST

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The Joint Committee on Taxation (JCT) estimates that the energy and conservation incentives included in the bill will decrease revenues by approximately \$17.5 billion over the next 10 years. According to JCT, it will also include a \$17.6 billion dollar tax increase on oil and gas companies.



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## ADDITIONAL VIEWS

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"The Administration has directly invested over \$12 billion through fiscal year 2007 in clean, safe advanced energy resources and supported billions more in tax incentives, including the use of tax credits for both renewable energy and clean vehicles. The Administration recognizes that tax incentives for renewable energy can promote energy security and reduce impacts on the environment. In the past, the Administration has proposed the extension or expansion of tax incentives for wind, biomass, and landfill gas. However, the Administration must strongly oppose H.R. 5351, because the bill would use the tax code to target tax increases on a specific industry in a way that will lead to higher energy costs to U.S. consumers and businesses. If this legislation is presented to the President in its current form, his senior advisors would recommend that he veto the bill." ([Statement of Administration Policy, 2/26/2008](#))

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## STAFF CONTACT

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For questions or further information contact Shea Loper at (202) 226-2302.